‘Teacher, we are hungry’. The violation of Quilombolas students’ right to adequate food, a case study

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This article presents a case study of a school located in the Quilombola area in the north-east of Brazil. Quilombolas are African descendants and one of the most food and nutritionally insecure groups in Brazil. The main objective is to describe the importance of availability and accessibility of information in protecting rights within the School Feeding Program. Findings reveal that a violation of the right to food was made by the judiciary leading to a lack of food in the school; duty bearers and operators of recourse mechanisms dealt with the violation inadequately. In conclusion, dissemination of information and duty bearers’ related obligations are critical for the enforceability of the right to food.

Keywords: School Feeding Program; right to adequate food; Quilombola; enforceability; human rights violations

Introduction

This article is a case study of a school located in a Quilombola area in Macapá, State of Amapá, northern Brazil. Quilombolas are Afro-descendants who live in rural regions in Brazil. The main objectives of the article are to: demonstrate the importance of the availability and accessibility of information on the School Feeding Program (SFP) in Brazil; explore accountability mechanisms associated with the SFP at the local level; look into how right holders perceive the SFP and how they respond to the case of the lack of food in the school. Likewise, it reports on the practice of local duty bearers and operators of recourse mechanisms. Field research findings frame an analysis of how rights holders and duty bearers understand and act to meet their responsibilities and state obligations respectively at the local level for human rights realisation, including recourse and remedy for violations of the right to adequate food.

The SFP is an important contemporary issue and an initiative that has demonstrated a strong impact on health, education and nutrition of students. The SFP has existed for over 200 years and was initially considered to be a charitable relief programme. SFPs now form national public policy in many countries, such the United States, India and South Africa, among others. The first SFP initiative was put in place in Munich, Germany, in 1790, where provision for meals at schools was part of an international campaign against vagrancy. Fifty years later the programme was disseminated to France and
England. Holland was the first country to introduce national legislation concerning school meals in 1900.\(^3\) However, Finland and Sweden inaugurated the first legislation recognising the rights of all public students to receive free hot school meals in 1940.\(^4\) Since then, many other governments have adopted and funded public SFPs in their policies. Although each government implements such policies differently, they all have similar general objectives which include the alleviation of hunger, enhanced school attendance and educational performance, and improved nutrition and health. The SFP is regarded as a social safety net that, especially in poorer communities, simultaneously enhances agricultural development through policies of procurement from local smallholder farms.\(^5\)

Brazil’s SFP has proven to be a good example for other countries developing their own SFPs because it integrates areas of education, health, nutrition and agriculture. The Brazilian SFP can be considered a model of rights-based policy because it aligns the national programme with international human rights law and associated intrinsic principles of universality, equity and participation.\(^6\) Since 2009, Brazil’s SFP has deliberately recognised students as rights holders and transforms the previously existing School Feeding Councils into human rights accountability mechanisms.

**Methodology**

The case study is based on data derived through a review of secondary literature focusing on the SFP, including official documents of the Brazilian SFP, as well as on the human right to adequate food. The international human right to adequate food framework provides the conceptual basis with which to analyse the data. The research employs an exploratory qualitative method to understand the students’ perception of the SFP in the context of the right to food, including participant observation, structured interviews and personal notes in a diary. The qualitative methods seek to understand the participants’ perceptions of the determined issue and their behaviour in relation to the object under study through observation, interviews, focus groups and a review of students’ essays.\(^7\)

The fieldwork started after approval was received by the Regional Ethic Committee of Amapá\(^8\) and with the consent of community members, a representative from the state Quilombola movement and the director of the school. The data collection was carried out from August to October in 2011. It began by observing daily interactions between school workers, including teachers, cooks and administrators, and the students from School Q.\(^9\) During this period, four students\(^10\) and their legal guardians were contacted to participate in interviews. The legal guardians signed an informed consent to agree with the research, as well as to allow their children and adolescents to participate in the study. Key informant interviews were conducted with SFP public employees from the State Education Department (SED) and, at the school level, members of the State School Feeding Council and Federal Prosecutors.

**The school feeding programme in Brazil**

The SFP officially started in Brazil in the 1950s as a national programme with financial support from the US. Initially, the programme’s main goals were to combat anaemia and goitre through the distribution of powdered milk throughout the north and north-eastern regions of Brazil. The objectives and enlargement of the Brazilian SFP evolved from the 1960s to the end of the 1980s, notably during the military dictatorship that lasted from 1964 to 1984. Brazil’s SFP was used by the military state to incentivise students between 7 and 14 years of age to stay in school. The programme was financially and
operationally centralised at the federal level, and aimed to provide 15% of the daily nutritional needs of students. From the outset, the SFP was heavily dependent on federal procurement of processed meals from the food industry, especially the dairy industry. The programme started to change with the end of the military’s dictatorship in 1985. Under the new 1988 Federal Constitution, the SFP was recognised in Articles 208 and 212 as an integral part of basic education and defined as an obligation of the state. In 1994, the administration and procurement of the SFP was decentralised to state and municipal levels with the objective of improving the quality of the meals and school performance. In 2003, the government under President Lula da Silva initiated the Zero Hunger Program aimed to eradicate hunger in Brazil through the integration of administration, public actions and programmes by different ministries. The Zero Hunger Program has four pillars, the first of which includes the SFP with the goal of increasing access to food for the most vulnerable population groups. In the same year, the SFP started to support schools located in indigenous areas with twice as much per capita funding as received by other schools, and in 2004 the same policy was also established for Quilombola schools. In 2009, the SFP Law was reformulated and it established that funds should contribute to meeting students’ nutritional needs and to develop their healthy eating habits. This fund can be also administrated by schools as a highly decentralised modality. The law also determines that funds should be used exclusively for the procurement of foodstuffs for all students enrolled in public schools.

The legal recognition of the right to adequate food at schools is listed in the Federal Constitution, under the Statute of the Child and Adolescent, 1990, Articles 4, 54 and 94, the Food and Nutritional Security Framework Law, and the School Feeding Law. The National Education Council of the Basic Education Sector published a resolution in 2012 that reinforces the relevance of the SFP for Quilombolas in Articles 8, 12 and 13 and of the human right to adequate food in Articles 12 and 13 regarding the basic education for Quilombolas.

Who are Quilombolas?

Brazil was colonised by Portugal over the course of more than 300 years from 1500 to 1822. During this period and until 1888, more than four million Africans were taken in bondage to Brazil to work mainly in agriculture. By the end of the sixteenth century, many black slaves began rebelling against their enslavement and sought freedom by escaping to the countryside. These fugitive slaves established settlements far away from their oppressors and named these settlements Kilombo (Quilombo in Portuguese), a word from an African Bantu language originating from the region between present-day Zaire and Angola.

Quilombo status and identity are based on self-recognition and identification. Calling oneself a Quilombola is considered a reaffirmation of Afro-descendant heritage and part of a historic process of resistance and struggle against black slavery and oppression in Brazil that existed from 1500 until 1888, when slavery was abolished. Quilombolas receive particular acknowledgement as right holders according to the Federal Constitution (1988), Articles 68, 215 and 216, in the 1989 Indigenous and Tribal Peoples Convention no. 169 (1989), which Brazil ratified in 2002, and in the National Policy of Sustainable Development of Traditional Communities (2007). They are also recognized to belong to a minority group in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992).
The exact number of Quilombolas in Brazil is unknown because the Brazilian national census does not use Quilombolas as a category for disaggregation, and they are considered to be part of the black population. The census in 2010 confirms that 97 million Brazilians identified themselves as black, representing 50.7% of the Brazilian population. The federal government recognises that there are more than 3500 self-identified Quilombola communities in the country as a whole, and 29 in Amapá alone.

Despite recognition of Quilombola rights, social inequalities and structural racism continue in Brazil. At the time of the abolition of slavery, no framework existed to help former slaves integrate into society, resulting in Afro-Brazilian exclusion from access to land, jobs and public policies. Social inequalities, when disaggregated, reveal that black people are disadvantaged in relation to the white population.

In the area of education, the LAESER Institute reported in 2013 that black people in Brazil 25 years old or older have received 6.38 years of schooling compared to 8.27 years for whites. Unemployment rates in Brazil demonstrate the racial difference between blacks and whites at 9.14% and 6.81%, respectively.

National food security research illustrates similar racial disparity. In 2004, 52.4% of blacks were food insecure, nearly twice as many as whites (28.2%). While these numbers have improved over the years for both categories, the disparity between black and white food insecurity, severe and consistent inequity and insecurity persist. In 2009, 43.4% of blacks and 24% of whites experienced food insecurity.

The first and only research conducted on the nutritional status of Quilombola children less than five years of age was carried out by the Brazilian government in 2008. The study showed that 11.6% of Quilombola children experienced stunted growth compared to the national level of stunting, without disaggregation, of 7%, demonstrating 65.7% higher chronic malnutrition in Quilombola children as compared to the overall child population.

This ongoing racial disparity in food insecurity and nutritional status of children reinforces the importance of public policies like the SFP that target the populations most vulnerable to food insecurity, such as the Quilombola, in order to improve their social and economic conditions.

The conceptual framework of the right to adequate food and the SFP in Brazil

The Universal Declaration of Human Rights (UDHR) from 1948 was a milestone for human rights. It is composed of a set of interrelated and indivisible human rights among which the right to an adequate standard of living, including food, is articulated in Article 25.

The content and principles of human rights are conceptualised and clarified under the UDHR and other international human rights instruments of the United Nations (UN). In 2003, the UN Common Understanding on a Human Rights Based Approach reinforced the importance of these principles to work on development processes and cooperation activities in UN agencies at the local and global level, and the 2013 Twenty Years Later Conference in Vienna reaffirmed this objective, calling on states to assure human rights. Human rights principles include: (a) universality and inalienability; (b) indivisibility; (c) inter-dependence and inter-relatedness; (d) non-discrimination and equality; (e) participation and inclusion; and (f) accountability and the rule of law. The Food and Agriculture Organization (FAO) identifies the following additional human rights principles: transparency, human dignity and recourse mechanisms. The UN Special Rapporteur on the Right to Food emphasises that all of these principles should be taken into account in the design, implementation and monitoring of public policies to guarantee the inclusion...
of the poor and to contribute to the progressive realisation of the right to adequate food for all.\textsuperscript{40} The human right to adequate food is recognised in several international instruments, which Brazil has signed and ratified, as well as in other international documents:

(1) Universal Declaration of Human Rights, 1948, Article 25.\textsuperscript{41}
(2) International Covenant on Economic, Social and Cultural Rights, 1966, Article 11.\textsuperscript{42}
(3) Declaration on the Right to Development, 1986, Article 8.\textsuperscript{43}
(4) Convention on the Rights of the Child, 1989, Articles 24 and 27.\textsuperscript{44}
(5) General Comment No. 12, issued by the UN Committee on Economic, Social and Cultural Rights, 1999, clarifying the meaning of the right to adequate food. It states that ‘the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement’. The comment indicates that the core obligation of states to realise progressively the right to adequate food is centred on ‘adequacy and sustainability of food availability and access’. Adequacy, considered here in terms of quality and quantity of food, means to provide for an appropriate diet and specific food needs that are linked with food and nutrition security and accessible all of the time, and that can be achieved without interfering with the enjoyment of other human rights. The inclusion of sustainability indicates that food should be available and accessible for present and future generations. It also asserts the importance of remedies and accountability of the violations of the right to adequate food.\textsuperscript{45}

In 2004, the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security was adopted unanimously by the state members of the FAO Council, including Brazil, with the objective to guide states on how to implement progressively their obligations on the right to food. Guideline 7 focuses on the legal framework and encourages states to have, in accordance with their national laws, adequate administrative, quasi-judicial and judicial remedies, which are accessible for recourse to vulnerable groups experiencing violations. The importance of human rights education, proper training, access to information and awareness, as outlined in Guideline 11, are also crucial to the realisation of the right to adequate food.\textsuperscript{46}

Under the jurisdiction of the Organization of the American States, Brazil further ratified the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights. Article 12 of this protocol, proclaims the right to adequate nutrition and promotes the eradication of malnutrition.\textsuperscript{47}

In line with the commitments undertaken in ratifying the above-mentioned international and regional legal instruments, Brazil has been translating the international human right to adequate food into its domestic laws, actions and programmes. These include:

(1) The National Food and Nutrition Policy, 1999, is part of the National Health Policy. It includes policy programming to realise the human right to adequate food through nutrition programmes.\textsuperscript{48}
(2) The National Food and Nutritional Security Framework Law, 2006, establishes the National Food and Nutritional System to promote and protect the right to adequate food which is recognised as interrelated with, and a prerequisite for, the realisation of other fundamental rights prescribed in the Federal Constitution. It additionally reinforces the obligations of the state to respect, protect, promote, inform,
monitor and evaluate the human right to adequate food, as well as to guarantee the institution and functioning of mechanisms of enforceability.\(^{39}\)

(3) The SFP Law, 2009, recognises the right to adequate food and defines the obligations and responsibilities of each actor involved in the programme. It also determines the procurement of at least 30% of food directly from local and regional family farmers, with priority granted to agrarian reform settlements, indigenous people and Quilombolas.\(^{50}\)

(4) The National Food and Nutritional Security Policy, 2010, ensures the realisation of the right to adequate food and guarantees the availability of mechanisms and instruments of enforceability of the right to adequate food within actions and programmes that integrate the National Food and Nutritional Security Plan at the Federal Level.\(^{51}\)

The inclusion of the right to food as a social right in Article 6 of the Federal Constitution, 2010, represents further progress in the legal recognition of the right to food and its justiciability in Brazil.\(^{52}\)

According to the Special Rapporteur for the Right to Food, Olivier De Schutter, ‘a constitutional right to food is the strongest possible basis the right to food can have, since all laws must conform to constitutional provisions. Including the right to food in the constitution implies that this right cannot be easily withdrawn ensuring greater permanency than ordinary laws’.\(^{53}\)

**School feeding is a human right**

Kent suggests the SFPs could be used to learn about rights and be designed ‘on the basis of clear and effective entitlements’ which could improve nutrition, education performance and the capacity of students to exercise their rights.\(^{54}\) The SFP in Brazil is more than a nutrition programme; it is intimately linked with strengthening small farm agriculture and with affirmative action for indigenous people and Quilombolas. In 2009, the SFP in Brazil became fully recognised in specific national legislation as a human right-based programme. This means that students were recognised as rights and claim holders and it clearly established the obligations of duty bearers.

The human rights framework is a pertinent tool to verify effective compliance of state obligations to respect, protect and fulfil the right to adequate food and related human rights, such as to education and to development. The framework incorporates the presence of effective and accessible recourse mechanisms in public programmes.\(^{55}\) This means that right holders of the SFP have the right to claim their rights when violated through a recourse mechanism. A violation of the right to food, according to General Comment no. 12,\(^{56}\) can occur when the state fails to meet the obligations to respect, protect and fulfil (facilitate and provide) the right, either through actions or omissions thereof (Paragraph 17). A violation is characterised by the unwillingness of the state to meet its obligations when the conditions are given to do so. Any kind of discrimination or retrogression related to the realisation of the right to food are also considered a violation.

The human rights framework for the SFP for Quilombolas applied in this research identifies:

(1) the rights holders: the Quilombola students; their legal guardians, seen as indirect rights holders, because they must be able to claim the rights of their children\(^{57}\); and Quilombola family farmers, because the school is required to buy at least 30% of the food products from the local family farmers\(^{58}\);
(2) the duty bearers: the government departments at different levels (federal, state and municipal); government officials and other public workers, especially school directors, teachers, school cooks, nutritionists; and

(3) the operators of claims/recourse mechanisms, those who are accountable for making recourse and remedy mechanisms accessible and available to rights holders, and who include members of the School Feeding Council and Federal and State Prosecutors of Public Ministry, among others.

The operators of recourse mechanisms have the obligation to respond to violation complaints and hold duty bearers accountable. According to the SFP Law (2009),59 the School Feeding Council has the responsibility to monitor, supervise and report on the SFP annually, as well as to receive violation complaints. It should be composed of one representative from SED, two education workers, two legal guardians of students and two representatives of civil society organisations.

The Federal and State Public Ministries also provide crucial recourse mechanisms that are recognised in the constitution and in the SFP Law, and that receive complaints, oversee the accounting, investigate violations of human rights and demand judicial redress of the violation. If a violation of the right to adequate food is suspected, the School Feeding Council can forward the claim to the Public Ministry, which can directly call for the duty bearers to remedy the violation; alternately, the Public Ministry can forward the claim to the Judicial Branch. As right holders, students and their guardians can also present claims directly to the Public Ministry, to the Local and National Food and Nutritional Security Councils, to Legislative Committees, human rights councils and even to the judicial system if the school and/or the School Feeding Council do not take the necessary measures to redress the violation.

According to SFP Law (2009):

(1) The main rights of students are:
   - to have healthy meals at school during all 200 of the mandatory schooling days;
   - to have at least 30% of the SFP food stuffs procured from local family farmers;
   - to have the menu prescribed by a nutritionist.

(2) The main obligations of duty bearers, as differentiated by their various representatives, are:
   - The Education Ministry guarantees the funds for the SFP to be used exclusively for the procurement of food by the SFP; state and municipal governments should cover the additional costs to implement and monitor the SFP at schools;
   - Schools should prepare the meals according the menu suggested by the nutritionist;
   - Schools should submit the food procurement accounting to the Municipal or SED and to the School Feeding Council; the School Feeding Council, in turn, is required to submit the overall accounting to the Education Ministry.

The importance of access to information for the enforceability of the right to adequate food

The right to adequate food is generally not well known or understood, particularly by those to whom it is most designed to respect, protect and provide for, namely those who are at the greatest risk of food insecurity, poverty and discrimination, including structural racism. At the same time, to have information about the right to adequate food, as a human and claimable right, as well as about the recourse mechanisms that must be made available and
accessible to ensure its enforceability, is crucial for right holders. It is especially relevant for potential or current victims of violations to possess knowledge of existing, available remedies, and of how to use them to leverage action to prevent, avoid and overcome such violations.

The enforceability of the right to adequate food presupposes, first, that institutional recourse mechanisms are available and accessible to right holders; and second, that operators of those recourse mechanisms will act as an intermediary for rights holders to register their violations claims and will enable remedy to violations complaints. Duty bearers at the national, regional and local level all hold the obligation to respect, protect and fulfil the human right to adequate food and ‘they must be held accountable for their performance’. Now far beyond aspirational theory, ‘enforceability’ has evolved its own human rights-based language in Latin America, where the word used is exigibilidad in Spanish, and exigibilidade in Portuguese. This broadly used term derives its legal meaning from the 1998 Quito Declaration on the Enforcement and Realization of Economic, Social and Cultural Rights in Latin America and the Caribbean which was drafted by Latin American human rights networks, regional organisations and a member of the United Nations Committee on Economic, Social, and Cultural Rights. The declaration describes the principles of enforceability for the realisation of the Economic, Social and Cultural Rights (ESCRs).

According to the Quito Declaration, ‘enforceability is a social, political and legal process’; it affirms that the’ ESCRs are subjective rights whose enforceability can be exercised individually or collectively’ (Paragraph 19). Under conditions of rights violations, rights holders, using any of the four levels of mechanisms to enforce ESCRs: administrative, political, legislative or judicial, have the power to demand that duty bearers fulfil their human rights treaty obligations on the right to adequate food.

Franceschini et al. describe the levels of enforceability of the right to adequate food in Brazil in line with the Quito Declaration:

(1) Administrative claim mechanisms – providing the possibility to claim effective realization of rights from the public institutions directly responsible for providing public services and fulfilling people’s rights, meaning those that are in permanent contact with the population.

In the case of the SFP, the school is responsible for receiving and investigating the complaints and for redressing the violated right when a violation is confirmed.

(2) Political claim mechanisms – offering the possibility of demanding the realization of rights from institutions responsible for managing public programs and policies, shared-management institutions responsible for proposing and supervising public programs and policies (Public Policy Councils), or representatives of the Legislative Branch. In Brazil, it is possible to demand that the Legislature use this competence to investigate possible irregularities or violations of rights on the part of the Federal Public Administration, with a view to preventing, redressing or remedying such violations.

The local, state and national managers of the SFP are responsible for receiving and investigating complaints and for redressing the violation of the right if the school is unable to do so. The School Feeding Council is also responsible for receiving claims, investigating violations, and forwarding them to the judicial system through the Public Ministry. The National and the Local Food and Nutritional Security Councils are responsible for
proposing and implementing enforceability mechanisms supporting the right to food as well as monitoring food and nutrition programmes, such as the SFP.\(^{53}\)

In the National Legislative Branch in Brazil, there are permanent and ad hoc committees.\(^{64}\) Both types of committees are mandated to receive complaints within the legislative branch. Rights holders are entitled to claim violations of the right to food within the following permanent committees: Committee on Human Rights and Minorities; Committee on Justice and Citizenship; and Committee on Social and Family Security.

The Brazilian Platform of Economic, Social, Cultural and Environmental Human Rights is a civil society network that defends and promotes these rights. This platform has a National Rapporteur on the Right to Food, who is responsible for receiving and investigating complaints, and reporting them to the government. The platform also promotes advocacy, public hearings, public petitions, debates, emails and letter campaigns, in order to guarantee and monitor the progressive realisation of the related human rights in Brazil.\(^{65}\)

(3) Quasi-judicial claim mechanisms – are the possibility of demanding the realization of rights from entities that are not part of the Judicial Branch (stricto senso), but that can address the Court as a last resort. Quasi-judicial institutions may present processes and (non-judicial) procedures that generate evidence, papers and related documents all of which can serve as a basis to promote action from the Judiciary.\(^{66}\)

The Public Ministry is an example of a quasi-judicial claim mechanism to promote enforceability of human rights in Brazil. The Public Ministry is defined in the Federal Constitution as having judicial capacity, independence and a clear mandate to promote and defend rights of the collective, and ensure the efficiency and effectiveness of public policies,\(^{67}\) thereby playing a crucial role in promoting the human right to adequate food. Right holders of the SFP can claim their rights directly in the Public Ministry, or the School Feeding Council can forward claims to the Public Ministry on behalf of right holders.

There are several examples of quasi-judicial recourse mechanisms offered by the Public Ministry in Brazil, including: an administrative civil suit called *public civil inquiry*; public hearings with the participation of the population, authorities and experts; and Term of Adjustment of Conduct (TAC), which is a formal agreement between the Public Ministry and local public administrations aimed at moving duty bearers towards the fulfilment of rights. The TAC is automatically executed by the judiciary when agreed upon terms are not implemented.\(^{68}\)

(4) Judicial claim mechanisms – opening the possibility of claiming the realization of rights before the Judicial Branch. This can be done through different formal instruments, such as Public Civil Actions (PCA). PCAs form the procedural instrument used in cases of alleged damage or threat of damage to right holders, consumers, the environment, urban order, economic order or any other diffuse or collective interest – meaning the interest not of an individual but of groups or even the entire society.\(^{69}\)

A good example of judicial claim mechanisms is the case of the right to adequate food litigation concerning the Mid-Day Meal Scheme at schools in India in 2001. The Supreme Court ordered the Indian government to introduce cooked mid-day meals in all government and government-assisted primary schools. However, the initiative departed from a public
civil society petition. Resolution of the policy conflict was deferred to the courts in the case known as PUCL v. Union of India and others.70

According to Beurlen,71 the harmonisation of international treaty law and constitutional law in Brazil helps greatly to develop enforceability of the right to food in the Brazilian Judicial Branch because it is guaranteed in the national constitution. Moreover, right holders are entitled to demand the state fulfil the right to food, through civil public action, popular action and judicial review.

The National Rapporteur for the Right to Food in Brazil,72 Valente (2007), emphasises that ‘the enforceability of the right to adequate food in Brazil is central to promote human rights, however the majority of Brazilian people do not know where and how to complain when they have the right violated. And neither do public workers, as duty bearers, know well what their obligations are’.73

A case study of a Quilombola school without an adequately functioning SFP

The case study was undertaken at a registered Quilombola school, ‘School Q’, in the Quilombola area known as Marabaixo74 in Macapá in the State of Amapá in northern Brazil. The Marabaixo community has a long history of struggle for their rights. Relatively recently, in 1992, under pressure from the local population and environmentalists, the state government signed a decree in favour of the Marabaixo community, legally defining its territory as an environmental protection area.75 At that time, the main objective was to protect and maintain environmental diversity. In 1999, the federal government recognised the area of Marabaixo as a Quilombola community, indicating that Marabaixo dwellers have the collective right to their land, protecting them from development by outsiders.

The last census (2010) documented 1033 people living in the Marabaixo community, including children, adolescents and adults. Most of them are catholic and celebrate saints’ days with traditional dance and food. Men and women work in the fields, where they primarily cultivate cassava to produce cassava flour for sale in the local markets. They also cultivate banana, passion fruit, acai and coconut as well as vegetables such as potato, okra and bur cucumber for local consumption. A few families have bovine cattle and buffalo.76

The community has a small historical museum, a catholic church, one health care service for basic care, and a kindergarten through eighth grade school for students from ages five to 17. There is only one public transportation line (a bus line), which goes from Macapá to Marabaixo every hour. The dwellers in Marabaixo are registered in the ‘Brazil without Extreme Poverty’ programme, which started in 2011 and aims to eradicate extreme poverty by the end of 2014. In this programme, people living in extreme poverty – receiving less than BRL 70.00 per month (US$28.79) – can access benefits such as: cash transfers, social and health services, agricultural technical assistance and participation in the rural extension programme.77 Field research could not verify how many people in the Marabaixo community were enrolled in the Brazil without Extreme Poverty programme, because the local programme administration did not provide that information.

The SFP for Quilombolas is a component of the Brazil without Extreme Poverty programme as a strategy to improve the food and nutrition security of vulnerable groups, as well as being part of the Zero Hunger Program. In the Marabaixo community, School Q is managed by the SED which decentralises federal school support by sending SFP-related funds directly to school bank accounts to purchase food. In the SED, there is an administrative staff of the SFP responsible or orienting and monitoring all schools. A specific menu for Quilombola schools is elaborated by an SED nutritionist that serves a period of four weeks with no repetition of meals, and which is sent to schools two times
per year. School directors are accountable to the SED and the State School Feeding Council for the administrative responsibility for the purchase, storage and preparation of products dedicated for school meals.

Since 2004, as a registered Quilombola school, School Q has received double per capita SFP funding from Brazil’s federal government directly into the school bank account for the sole purpose of procuring food. The State of Amapá covers the additional related costs such as fuel, equipment and food staff. In 2011 for each of the 200 school days, School Q received BRL 0.60 (US$0.29) per student per day from the federal government, and BRL 0.46 (US$0.23) from the Amapá state government. 78

Despite this amount of money being transferred to School Q in 2011, from the end of August until the middle of October of that year, 235 students did not benefit from any school feeding; the school offered students no food during this time. According to documents provided by School Q and confirmed at the Regional Labour Court, the money from the federal and local governments was blocked in the bank account by a judicial order, linked to a lawsuit, issued by the Regional Labour Court. The reason for the lawsuit was the absence of payment for the privately outsourced workers in the school. 79

The director of School Q stated that information about the blocked bank account was made public on a blackboard located at the entrance of the school. She informed students, parents and legal guardians that the school did not have food and the students therefore would be required to go home earlier every day. On a weekly basis, the director summoned the parents and students of each grade to update them on the absence of school feeding. Neither students nor their legal guardians ever complained to public authorities beyond School Q, or to the School Feeding Council about the situation. Students and guardians simply listened to the information School Q provided about school feeding and instead of organising a protest or a formal violations complaint took the opportunity of the weekly meetings to ask the director and teachers about students’ grades and performance in class and exams.

One month after the school had stopped offering school feeding, post-elementary students (fifth–eighth grade) were asked to comment about the lack of school meals and if they were taking any action at that time, or if they planned to take action on the matter in the future.

I don’t know how to say this, but there should be school meals. Because we are going home earlier, it is not possible to carry out the school activities well, so it’s getting more difficult for us. I already talked with my friends about the lack of food at school. We think it is bad, everybody in the class is complaining, and saying that they are hungry. My friends complained about it to the teacher, but we haven’t done so to the director (student from fifth grade, 11 years old).

It is clear from the student’s statement that she wants for herself and her classmates to be free from hunger and that she recognises the importance of satiety and nutrition to the quality of education and the students’ capacity to learn. Despite the fact that students registered no formal complaint, some students showed that they expected action from the teacher regarding their lack of food at school. Unfortunately, however, no teacher reached out to help students think about and act upon the violation of their right to food.

I think that school feeding is important, because sometimes, in the class, my classmates are hungry and cannot think much about the activities requested by the teacher, and cannot pay attention to the explanation. They just think about the missing school feeding. They say: ‘Oh teacher, I’m hungry’, and she says: ‘I cannot do anything’ (student from sixth grade, 12 years old).
My classmates haven’t complained. We already thought about complaining to the director. Because they talked in the class, and the teachers said that we have to complain to the director, however we haven’t done it yet (student from seventh grade, 13 years old).

The meetings between duty bearers of the school and students and their guardians, and public notes on the entrance blackboard about the lack of school feeding were apparently decisive in leading the students to accept it as a natural phenomenon without complaint. This is also seen in the discourse of a student and his grandmother, and one father.

Well, to tell the truth, we have not really complained, because students from 5th to 8th grades had a meeting with the director, and she told us about the lack of food, because we asked the director what happened about the food, and the director explained everything (student from eighth grade, 14 years old).

I think it is really damaging for the children to be without food, because they are going home early, and this is another loss. We complain just for complaining, we are allowed to complain, but as people say, the director has tried everything to solve this problem, but she couldn’t get it solved. We talked with her, but we cannot do anything. She told us that she has already gone to SED, but nothing was done (a grandmother).

I think this is the third week or almost one month that there is no food at school. In the first semester, there was, but now there isn’t. I haven’t complained at all about it. My daughters complained to me that the school doesn’t have food, but I’ve never talked about it with anybody (a father).

This shows that the director does not know that the students have the right to school feeding, and that she/he has the obligation to guarantee this. And the students and guardians were not aware of the School Feeding Council and of the Public Ministry. This lack of food may also affect family members because if the school is not providing meals, the family must try to provide them, which then impacts their budget. Another voice that has the roles of both, indirectly, a rights holder on behalf of her child and a duty bearer as the Quilombola representative on the School Feeding Council says:

We know about it [the violations and the possibility of reporting them], but the SED, as an institution responsible for schools, already took the initiative to send this information to the Public Ministry. The Regional Labour Court claims that its actions benefit the right of the workers; however we know that the federal funding should not have been blocked. There is an illegality, and it is up to the director of each school to go to the Public Ministry to solve it (Quilombola mother and member of School Feeding Council).

From this statement we can infer that there is an information and knowledge gap regarding the functioning of some of the recourse mechanisms. Members of the School Feeding Council appear not to be adequately informed about exercising their duties as members of a recourse mechanism. The School Feeding Council should be aware that their responsibilities go beyond the general monitoring of the programme, and indeed extend to referring formal violation complaints to the State Department of Education and the Public Ministry when a violation of the right to food is taking place in a specific school. The following statement reflects this reality:

The School Q is in a serious situation. Its funding is blocked by labour actions in the Regional Labour Court. I don’t know how far this is positive or irregular, because the funding for school feeding is not supposed to be used to pay workers. The SED should already have done
something to avoid further damage to the children. Up to now, I haven’t seen any formal initiative on the part of SED to solve this problem (a member of the School Feeding Council).

Clearly the School Feeding Council was aware of the violation of students’ right to food, but they were not aware of their responsibility to seek redress; they expected, rather, that duty bearers should remedy it on their own. Prosecutors from the Public Ministry alleged that they were not aware of the absence of school feeding in a Quilombola community and were not informed about the case by right holders, the School Feeding Council or education authorities, in contradiction to the testimony of the School Feeding Council above.

I didn’t know that the School Q doesn’t have school feeding. Why hasn’t the community leadership come here to inform me? This is an absurdity. Nobody came here to complain about this (a prosecutor).

I haven’t received any complaints from parents and students, unfortunately. I think it could be lack of information, it is sure. I think the issue about information is related to the culture. Students from the Public University came here to complain, however students from primary and medium level, never come. I didn’t know that School Q doesn’t have school feeding. What is the reason? (a prosecutor).

At School Q, the director was desperate to get a solution from the SED about the blocked funding.

I don’t know what to do anymore. I’m going to the SED almost every day and saying that the money was blocked, but up to now, nothing has been done (Director).

At the same time, a key informant from the SED denies knowing about the lack of food at School Q:

I know that School Q has been receiving funding for the last three months. Usually, when they don’t receive the funding, they come here immediately to get information about it. I haven’t received any information that they haven’t received the money. We never received complaints from School Q (one of duty bearers at SED).

The statement above shows a serious disconnect between what the director and the other responsible parties of the SFP said and what the SED claims, suggesting a communication gap. It does reveal that the obligation to track and monitor the programme was not met by the duty bearers of the SED. It also indicates that at the school level, duty bearers are not well informed about the SFP for Quilombolas specifically, or about legislation, objectives and the right to adequate food at school more generally. As two key informants asserted,

I don’t know about SFP’s legislation. Nobody came here to talk about it. We had a meeting about the Statute of Children and Adolescents, because we called the local institution which works with children’s rights (Director).

I don’t know about the SFP’s legislation. I know that the menu comes from SED, but I don’t know who prescribes it. Nobody came here to talk about human rights. In reality, we called members of the Institution of Children’s Right to speak about the Statute of Children and Adolescent (Pedagogue).

Duty bearers at SED, responsible for the SFP, know very well about legislation, and already participated in several meetings about the SFP. However, they never carried out any action
to inform duty bearers at school level about the programme and their obligations related to the right to adequate food. It was observed that duty bearers at the state administrative level put much more emphasis on prescribing the food menus to schools according to the legislation, and in training cooks about hygiene and menu preparation than on the practical significance and functioning of the laws on the human right to adequate food in the context of the effective implementation of the SFP. Regarding the purchase of food products from local farmers, in periods when the school had funds available, it was mentioned — in informal conversations with members of family farmers, men and women — that the school was not regularly purchasing food from them. However, at the same time they mentioned their fear of selling their products to schools because they alleged that the programme does not function as well as it should.

I prefer not to sell to schools, because if I sell to schools I heard that I cannot sell my products to other markets. And besides that, the director cannot buy our products regularly; I’d prefer to sell them in the public market (a local agricultural producer).

Discussion

The SFP in Brazil is an example of how the right to adequate food was translated into domestic legislation, public policies and programmes. The programme is regulated by laws and regulations in line with international human rights laws and standards, which allow it to be recognised as a rights-based programme. For example, the SFP recognises students as entitled to rights, it encompasses minority groups, it has mechanisms of accountability, such as the School Feeding Council, and specifies obligations of duty bearers, which are in line with human rights instruments.

Despite this, the students in School Q were left without food for 40 days due to a judicial decision elicited by a labour suit which led to the blockage of the federal funds in the school bank account. On the basis of human rights, international instruments and national laws aforementioned, the judiciary breached the obligation to respect the rights of minority groups, the right to adequate food and the right to education of students, since all students had to leave school earlier than usual because of hunger and an inability to concentrate in their classes.

The violations of the right to adequate food and the right to education described in this case study were caused by an administrative injunction of the Regional Labour Court carried out with the intention to protect the rights of a worker, in response to a law suit, and led to blocked funds. The court decision indicates that there is a disconnect between the intention of protecting the rights of workers and the respect, protection and promotion of the human right to adequate food, and the right to the education of quilombola students, who are recognised as a minority group.81 A human rights violation is especially clear here because the blocked federal funds were specifically meant for the procurement of school meals, and cannot be used for any other type of expenditures.82

Recourse mechanisms function on administrative, political, quasi-judicial and judicial levels. In spite of the existing recourse mechanisms and remedy options available for the right holders of the SFP, they were not utilised. The main reason for this was the lack of information provided to state and local level duty bearers and rights holders alike about their right to adequate food and the associated obligations and enforceability mechanisms. A troubling fact is that the School Feeding Council, which is the local entity that should be responsible for informing and taking action on the case, did almost nothing. And the omission of the state agents to answer promptly to the situation presented to them by the director...
directly contributes to the violations. In addition, the failure of the state to guarantee the payment of its workers demonstrates negligence with public services and that basic infrastructure facilities are probably missing. Even more worrisome is the fact that the Regional Labour Court, which is part of the judiciary, was the institution responsible for the violations at School Q with an act that did not take into account the SFP Law and the provisions relative to the rights of the students. Therefore, it indicates that much more has to be done in Brazil in order for the legal enforceability mechanisms to really start to work. Table 1 summarises the claim mechanisms of the right to food available for the right holders in the context of the SFP for Quilombolas and the degree to which they were used, or not, in this specific case in School Q.

In the case at hand, two recourse mechanisms were used – administrative and political – by the director of the school and by a Quilombola member of the School Feeding Council, respectively. However, neither of the recourse mechanisms was effective in reversing the violation. This alone is a significant reason that should have motivated the parties to be in direct contact with the Federal Public Ministry wherein an action could have taken place to unblock the school’s bank account.

Additionally, there was a lack of information on the part of the rights holders, who were unaware of their rights. Duty bearers additionally failed to meet their obligations and there were gaps in the performance of the School Feeding Council in relation to how to proceed

<table>
<thead>
<tr>
<th>Level of recourse mechanisms</th>
<th>Responsible institution</th>
<th>Recourse mechanisms available for Quilombolas</th>
<th>Recourse mechanism used or not used</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative</td>
<td>School Director</td>
<td>State administrator of the SED</td>
<td>Not used</td>
</tr>
<tr>
<td></td>
<td>SED</td>
<td>Financial division of SED</td>
<td>Used by the Director</td>
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<tr>
<td></td>
<td>Education Ministry</td>
<td>National Administrator of the SFP</td>
<td>Not used</td>
</tr>
<tr>
<td></td>
<td>National Legislative Branch</td>
<td>Committee on Human Rights and Minorities</td>
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<td></td>
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<td>Committee on Justice and Citizenship</td>
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<td>Committee on Social and Family Security</td>
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<tr>
<td>Political</td>
<td>State Legislative</td>
<td>Human Rights Commission</td>
<td>Not used</td>
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<tr>
<td></td>
<td>Human Rights</td>
<td>Commission for the Monitoring of Violations of the Right to Food</td>
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<td></td>
<td>Ministry</td>
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<td></td>
<td>National Food and</td>
<td>Standing Commission on the Right to Food</td>
<td>Not used</td>
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<td></td>
<td>Nutritional</td>
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<tr>
<td></td>
<td>Security Council</td>
<td>School Feeding Council</td>
<td>Used by a Quilombola member of the School Feeding Council</td>
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<td></td>
<td>SED</td>
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<tr>
<td>Quasi-Judicial</td>
<td>Brazilian ESCRs</td>
<td>National Rapporteur on the Right to Food</td>
<td>Not used</td>
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<tr>
<td></td>
<td>Platform</td>
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<tr>
<td>Judicial</td>
<td>Judiciary</td>
<td>Prosecutor from Public Ministry</td>
<td>Not used</td>
</tr>
</tbody>
</table>
with this case. If right holders, duty bearers, or the School Feeding Council had complained to the Public Ministry, funds could have been unblocked. Complaints could have been elicited by the workers in the SED, by the workers at School Q, by the School Feeding Council, by the community itself, or by individuals. Yet, prosecutors of the Public Ministry were not informed about the case and they could not do anything to ameliorate the situation. Table 2 summarises what people involved with the SFP should have done versus what was done by the various actors with regard to the lack of food at School Q.

A teacher, who spends a lot of time with students, should play an important role in the pedagogic teaching–learning process that includes knowledge about human rights and their practical manifestation in daily life, including with respect to the SFP. Learning about human rights in general, and the SFP in particular, has relevance far beyond the school-based availability of food, but contributes directly to the building of citizenship in students. An empowered teacher, aware of the right to adequate food and of her/his responsibilities as a public educator and therefore a duty bearer, is fundamental to students’ civic development and their potential to change social conditions. A better scenario would have been for teachers to have heard the complaints of the students and not only conveyed them to the director and even to the School Feeding Council, but helped them to formulate their complaints in terms of a violation, for which they have the right to demand (local) state accountability.

**Conclusion**

The SFP represents an advancement of public food policy and recognition of the international human right to adequate food at the local level in Brazil. To address Quilombolas within the SFP is an affirmative action to reduce inequalities which still exist in the structural system. To
promote a rights-based function of the SFP designates specific recourse and remedy options, including the School Feeding Council, to create political claim mechanisms within the programme. To date, however, the operators of the SFP have been unsuccessful in proactively informing students and their guardians about their SFP rights, in particular how they can hold duty bearers accountable for violations of their right to food.

A number of actors have to commit to cooperate in order to realise the right to adequate food at the local level. Duty bearers at the local, state and federal levels must be continuously reminded and made aware of their obligations related to respect, protect and fulfill the human right to adequate food within the SFP and of minority groups. Members of the School Feeding Council also need to be made aware of their responsibilities to perform adequate monitoring of the programme, in addition to knowing about the functioning of claim mechanisms and how to proceed in redressing violations of the right to adequate food.

The case study points to the possibility that had the recourse mechanisms been effectively called upon, the situation could have been reversed. However, the right holders were not informed that they were entitled to complain or that different recourse mechanisms were available to them. Moreover, the director was not informed of her obligation to guarantee the provision of food and to complain about the mismanagement of funds.

This finding is in line with the analysis of Valente et al. regarding the critical need to develop enforceability for the right to food in Brazil through means of recourse and remedy. The authors point out that a true implementation of the right to food in practice requires an ongoing considerable education and training initiative targeted at public agents, civil society and parliamentarians about the right to adequate food and its enforceability.83

According to the Right to Adequate Food Brazilian Report (2009), a number of actions in the form of communication and training on the right to adequate food have been carried out by different actors of the government and civil society. Information has been distributed in the form of booklets, posters, video campaigns, meetings and workshops with representatives of civil society and the government in the form of online training.84 However, it seems not be effective or meaningful for Quilombolas.

Despite the many steps that have been taken to promote understanding of the mechanics and content of the right to adequate food, this case study demonstrates a lack of access to information on the part of right holders and duty bearers. Enforceability of the right to food and the inadequate functioning and utilisation of the existing recourse mechanisms have played a central role in the non-realisation of the SFP during 40 days of no food and early school closings at School Q.

State and local education authorities have the obligation to ensure adequate meals and regular education, which have clearly not been provided, which indicates that no monitoring process is available, leaving the responsibility to guarantee these rights to the claim and corrective actions of the right holders. This also indicates that preventive actions by the state and civil society are missing.

Increasing the awareness obligations demands action beyond the SFP and represents a cultural and social challenge to the overall functioning of the administrative structure of public services in Brazil, and also in the overall society. This case study shows that right holders suffer not only from hunger, but also from violation of the right to education and a craving for information. Information must be provided on how to access recourse mechanisms in the context of ethnical groups; it is the key to the enforceability of the human right to adequate food, to education and other rights. This information should be disseminated to right holders, duty bearers and operators of claim mechanisms to help to build broad civic capacity not only for Quilombola students, but among all people involved in the SFP and focused on realising the human right to adequate food for students at school.
Acknowledgements
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Notes
1. Data for this inquiry is derived from an ongoing files study of the School Feeding Program for Quilombolas, carried out from August to November in 2011, as part of PhD research.
8. The project was approved by the Ethic Committee of the Institute of Education and Research of Amapá, no. 002/2011.
9. For ethical reasons, the name of the Quilombolas school will not be revealed, and it will be replaced by ‘School Q’.
10. The four students were representatives of the fifth to eighth grades – chosen by their classmates before the study was carried out as a school activity annually independent of the research.

15. At the time regular schools received BRL 0.13 per student/school day and indigenous schools started receiving BRL 0.26 per student/school day.


31. UNICEF and UNIFEM, Desigualdades Raciais e de Gênero entre Crianças, Adolescentes e Mulheres no Brasil, no Contexto dos Objetivos de Desenvolvimento do Milênio (Brazil: UNICEF and UNIFEM, 2005); Instituto de Pesquisa Econômica e Aplicada, Retrato das desigualdades de gênero e raça – 3ª edição – Análise preliminar dos dados (Brasília: IPEA, 2008).


40. Olivier De Schutter, Countries Tackling Hunger with a Right to Food Approach (Briefing Note 01, May, 2010).

41. United Nations, UDHR.


52. Constitution of the Republic of Brazil, art. 6.
53. Olivier De Schutter, *Countries Tackling Hunger with a Right to Food Approach*.
55. Ibid.
59. Ibid.
66. Food and Agriculture Organization of the United Nations, Exigibilidade: Mechanisms to Claim the Human Right to Adequate Food in Brazil.
69. Food and Agriculture Organization of the United Nations, Exigibilidade: Mechanisms to Claim the Human Right to Adequate Food in Brazil.
71. Alexandra Beurlen, *Direito humano à alimentação adequada no Brasil* (Curitiba: Juruá, 2008).
72. The National Rapporteur on the Right to Food is hosted by the Brazilian ESCRs platform and was created on the basis of the experience of the human rights special rapporteurs of the UN.
74. Marabaixo is a fictitious name for the community, for the same reason mentioned in note 9.
79. The school receives funding to hire private workers to clean and prepare the food at the school. The lawsuit was promoted by a cleaning worker who wished to receive the labour rights related to her payments.
80. The International Covenant on ESCRs of 1966, articles 11 and 13; Convention on the Rights of the Child, articles 27, 28 and 29; the National Constitution of 1988, article 6, 208 and 227; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; Law 11.346/2006, which assure the right to adequate food; and the SFP Law 11.947/2009, which regulates the programme.
83. Valente et al., ‘Instrumentos e Mecanismos Não Judiciais de Exigibilidade do Direito Humano à Alimentação Adequada no Brasil’.